

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

**LEXINGTON INSURANCE COMPANY AND  
NATIONAL UNION FIRE INSURANCE COMPANY OF  
PITTSBURGH, PA**

Plaintiffs

v.

**VIRGINIA SURETY COMPANY, INC.,  
Defendant.**

**CIVIL ACTION NO.  
04-11109 RGS**

**MOTION OF PLAINTIFFS, LEXINGTON INSURANCE COMPANY AND NATIONAL  
UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, FOR LEAVE TO FILE  
SUPPLEMENTAL AUTHORITY IN SUPPORT OF THEIR MOTION FOR SUMMARY  
JUDGMENT AND IN OPPOSITION TO THE CROSS-MOTION FOR SUMMARY  
JUDGMENT OF DEFENDANT, VIRGINIA SURETY COMPANY**

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Plaintiffs, National Union Fire Insurance Company of Pittsburgh, PA ("National Union") and Lexington Insurance Company ("Lexington"), pursuant to Local Rule 7.1(b)(3), hereby move the court for leave to file supplemental authority in further support of their Motion for Summary Judgment and in Opposition to the Cross Motion for Summary Judgment of defendant Virginia Surety Company ("Virginia Surety"). A copy of the opinion of the U.S. District Court for the Western District of Washington in Genie Industries, Inc. v. Federal Ins. Co., 2006 U.S. Dist. LEXIS 78193 (W.D. Wash. 2006), decided on October 26, 2006, is attached hereto as Exhibit 1.

Said Motion is made on the grounds that the Genie decision, which is directly relevant to the issues being considered by the court in connection with the parties' cross-motions for summary judgment, was only recently decided and was not available at the time Lexington and National Union filed their last Reply Memorandum in this matter.

For these reasons, Lexington and National Union respectfully request the court to consider the attached supplemental authority.

**Dated:** February 1, 2007

Respectfully submitted,  
***Lexington Insurance Company and  
National Union Fire Insurance Company of  
Pittsburgh, PA***  
by their attorneys,

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/s/ *Gerald S. Frim*

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### **CERTIFICATE OF SERVICE**

I, Gerald S. Frim, hereby certify that I have served this document and all exhibits thereto by hand upon counsel of record and that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on February 1, 2007.

**Dated:** February 1, 2007

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